



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

September 5, 2000

MEMORANDUM FOR THE ATTORNEY GENERAL

FROM:

Robert Raben

Assistant Attorney General

SUBJECT:

Weekly Report for September 5, 2000 - September 8, 2000

The House will return from recess on September 6; the Senate will return on September 5.

THE WEEK AHEAD

**Carnivore:** On September 6, the Senate Judiciary Committee (Hatch, Chair) will hold a hearing entitled "The Carnivore Controversy: Electronic Surveillance and Privacy in the Digital Age." The Department will be represented by Kevin DiGregory, Deputy Assistant Attorney General, Criminal Division and Marty Stansell-Gamm, Chief of the Computer Crime and Intellectual Property Section. (Daley)

**Electronic Privacy:** On September 6, the House Judiciary Committee's Subcommittee on the Constitution (Canady, Chair) will hold a hearing on H.R. 5018 and H.R. 4987, legislation concerning electronic privacy. The Department will be represented by Kevin DiGregory, Deputy Assistant Attorney General, Criminal Division and David Green, Principal Chief of Computer Crime and Intellectual Property Section. (Daley)

**Campaign Finance:** Department representatives from the Criminal Division and the Office of Legislative Affairs met on August 29, with minority staff from the Senate Judiciary Committee (Hatch, Chair) to answer factual questions related to campaign finance issues in preparation for drafting a minority report.

The Department will continue to work with all staff in responding to pending and new document requests. It still appears that Senator Specter may wait until after the November election to issue a comprehensive report covering campaign finance, Peter Lee, and an update on Wen Ho Lee. A companion volume reproducing documents produced by the Department to the Committee is planned; staff indicate willingness to provide the Department with advance notice in order to make privacy redactions before publication. No new hearings are scheduled at this time. (Walter)

**Wen Ho Lee:** Judge Parker's August 25 order requesting production to him of documents for in camera review includes a direction that "the government must produce, by September 15 classified transcripts of testimony "by the Attorney General and any other DOJ (including FBI) and DOE officials" related to Lee; House and Senate counsel were orally advised of the order last

week and the Department is preparing a letter to House and Senate Counsel formally forwarding a copy of the order to them this week. (Walter)

**House Judiciary Committee Oversight:** Committee staff have requested additional information about payments of attorneys fees for federal employees and we are conferring with them about how best to accommodate their information needs without undue burden on Civil Division resources. We also expect to provide them with access to the declination memoranda regarding our criminal investigation of two federal employees who were involved in the disclosure of Privacy Act protected information. Access to the documents will be followed by a briefing to answer staff questions and further clarify our position in this matter. The access will be provided pursuant to a confidentiality agreement. (Burton)

**Waco:** We are continuing to work with staff of the House Government Reform Committee (Burton, Chair) as they conclude their oversight investigation of this matter. We have been advised that counsel for the two line attorneys in the U.S. Attorney's Office in the Western District of Texas, [REDACTED] and [REDACTED], will object to the Committee staff request for their interviews and it is the position of the Special Counsel that the Department should neither persuade nor dissuade the [REDACTED] from agreeing to the interviews. We expect to communicate this in a letter to the Committee this week. Our document production to the Committee also is continuing. (Burton)

FOIA EXEMPTION (b)(7)(D)

**House Government Reform Subpoena for Declination Memoranda:** Committee staff have been provided with access to classified OPR declination memoranda relating to unauthorized disclosures of classified information by [REDACTED]. These documents were within the scope of a Committee subpoena for multiple declination memoranda; the remaining memoranda, which originated with the Criminal Division, have already been made available for review by the staff. (Burton)

FOIA EXEMPTION (b)(7)(D)

**House Judiciary Constitution Subcommittee Mark-up:** On September 7, the House Judiciary Committee's Subcommittee on the Constitution (Canady, Chair) is tentatively scheduled to mark-up HR 5018 and HR 4987, legislation concerning electronic privacy. The Department does not support either of these bills in their current form. (Daley)

**Telecom Mergers:** Department representatives from the Office of the Deputy Attorney General, Criminal Division and the Office of Legislative Affairs met with House and Senate Commerce Committee minority staff to brief them on law enforcement and national security concerns that can arise in telecommunications mergers involving foreign government ownership, in preparation for the House Commerce Committee hearing on the issue scheduled for September 9. DAAG Kevin DiGregory from the Criminal Division and FBI General Counsel Larry Parkinson are scheduled to testify at the hearing.

The Department continues to work with House and Senate staff contacts on pending legislation (S. 467 [DeWine/Kohl] and H.R. 4019 [Pickering/Tauzin]), and on the pending telecom merger bills that would prohibit mergers of a U.S. telecom company with a company with more than 25 percent foreign government ownership (S. 2793 [Hollings] and H.R. 4903 [Dingell/Marky]). A briefing for House Intelligence Committee staff on the Department's and FBI's law enforcement and national security interests in these bills is in the process of being scheduled. (Walter)

**McDonnell-Douglas:** House General Counsel and the General Accounting Office (GAO) are considering whether to intervene in this case on a motion to compel discovery to prevent disclosure to the defense of certain witness statements GAO voluntarily turned over to the office of the U.S. Attorney's office for the District of Columbia; a conference call with the Office of Legislative Affairs, the U.S. Attorney's office, House Counsel and GAO representatives occurred on September 4; the motions hearing was scheduled for September 5. (Walter)

**False Claims Act:** On September 6, staff from the Civil Division, Criminal Division, and the Office of Legislative Affairs are meeting with staff from the House Budget Committee (Kasich, Chair) to educate the Committee about the factors we consider when deciding whether to bring a false claims act case, and in some situations criminal charges, against nursing homes and other health care providers. (Pearlman)

**Workplace Investigations by Third Parties and Coverage under FCRA:** On September 7, the House Banking and Financial Services Committee's Financial Institutions and Consumer Credit Subcommittee (Roukema, Chair) has scheduled a mark-up of H.R. 3408, a bill to amend the Fair Credit Reporting Act to exempt certain investigative reports from the requirements of the act. (Ho)

**Radiation Exposure Compensation Act:** On September 7, staff from the Justice Management Division, Civil Division, and the Office of Legislative Affairs are meeting with staff from Senate Budget Committee (Domenici, Chair) to discuss the possibility of making RECA funding a permanent and indefinite appropriation. (Pearlman/ Daley)

**Hate Crimes:** Plans are underway for the Minority (Congressman Barney Frank) to offer a motion to instruct the conferees to keep the hate crimes language in the Defense Authorization bill. This motion could be offered as soon as Friday, September 8, but may not occur until next week. (Scott-Finan)

**Meeting with Staff of Senator Grassley on a Kimel Fix:** On September 8, representatives of the Office of Legal Counsel, the Civil Rights Division, and the Office of Legislative Affairs will meet with staff for Senator Grassley to provide technical assistance on a legislative proposal that would provide state employees with the right to sue his/her employer under the Age Discrimination in Employment Act (ADEA) by conditioning state receipt of federal funding under the Older Americans Act to a waiver of the state's sovereign immunity. Under Kimel v. Florida Board of Regents, the Supreme Court held that a state could not be subject to suit by private individuals under the ADEA on the basis of sovereign immunity under the eleventh amendment. (Ho)

**HR 809, Federal Protective Service Reform Act:** The Senate Committee on Environment and Public Works (Smith, Chair) is considering hearings on this House passed legislation.

(Daley)

#### THE WEEK IN REVIEW

FOIA EXEMPTION (b)5

**White House E-Mails:** Staff from the House Government Reform Committee (Burton, Chair) wrote to Campaign Financing Task Force Chief Robert Conrad last week, requesting all

Department communications with Daniel Barry and/or his attorney. The Criminal Division reports that such documents pertain to a pending investigation and their disclosure at this time to the Committee would be inconsistent with the Department's law enforcement interests. (Burton)

**Native Hawaiian Hearings:** From August 28 through August 31, the Senate Indian Affairs Committee (Campbell, Chair) and the House Resources Committee (Young, Chair) held a series of field hearings on S. 2899 and H.R. 4904, which pertain to the formal relationship between the United States and Native Hawaiians. Jacqueline Agtuca, Acting Director of the Office of Tribal Justice, testified on behalf of the Department. (Ho)